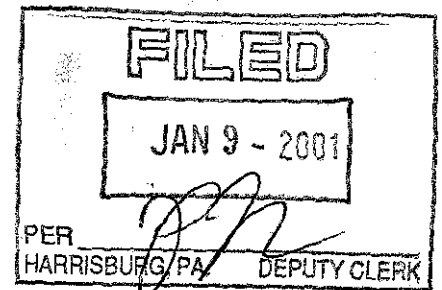


IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE  
Plaintiff,  
vs.

ORIGINAL CIVIL No. 1:00-CV-00  
U.S. District Judge  
Magistrate Judge

DR. ROBERT CLARK,  
MARTIN L. DRAGOVICH,  
JOHN A. PALAKOVICH,  
ROBERT N. NOVOTNY,  
MICHAEL J. KAZOR and  
JOHN ANDRADE  
Defendants.



BRIEF IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL

I. STATEMENT OF THE CASE

THIS IS a CIVIL RIGHTS ACTION filed under 42 U.S.C. § 1983. Plaintiff John Richard Jae, a Pennsylvania State Prisoner, prose and in forma pauperis, and asserting claims unlawful placement in restrained mental health and treatment, and the unlawful decisions of guilty as prison misconducts which were a result of plaintiff's mental health illness disease & the affirmation of such of the unlawful confinement of plaintiff in the Prison's Housing Unit ("RHU") and disciplinary custody status, punishment and the unlawful recommendation for a transfer to the management unit, all of which violate the Eighth & Fourteenth Amendments of the United States Constitution & Plaintiff there under. Plaintiff is now filing a Motion For Appoint Counsel. THIS IS his Brief In Support of such Motion.

II. STATEMENT OF THE FACTS

Plaintiff's statement of facts here is the same as

claimant of facts & content in his Brief In Support

### III. QUESTION PRESENTED

SHOULD THE COURT APPOINT COUNSEL FOR THE PLAINTIFF HEREIN THIS CASE?

[Suggested Answer: Yes]

### IV. ARGUMENTS

In deciding whether to appoint counsel for an indigent, the court should consider whether the case has merited the factual complexity of the case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues. See Tabor v. Gage, 6 F.3d 147 (3d Cir. 1994); Parham v. Johnson, 126 F.3d 454 (3d Cir. 1997). Plaintiff now address each of these factors.

#### 1. Factual Complexity

On April 24, 2000, the Plaintiff alleges that Defendant Dr. Robert Clark, the Chief Prison Psychiatrist at the State Correctional Institution at Camp Hill (Camp Hill) ordered the Plaintiff placed in a black box, steel ankle waist chain and a padlock without first examining, seeing and/or talking to the Plaintiff himself personally to make such. It was absolutely necessary to do such to this Plaintiff such was done for punitive purposes, was not the least restrictive alternative which could have been used & harm to the humane treatment of the Plaintiff that as a direct result of him being placed in such steel handcuffs, black box, steel waist chain and a padlock Defendant Dr. Clark, from April 24-27, 2000, Plaintiff was unable to eat normally & had to stick his mouth down in his food & drink & it like a dog, which not only was humiliating, but was really difficult to do - he had extreme difficulty urinating & did not move his bowels at all. He could not wipe himself & most times wound up feeling all over him. He did urinate, which was not only humiliating, but was extremely uncomfortable. He had to remain in wet, pissy undershorts and that he suffered unnecessary mental & physical pain, anguish & torture to his hands.



steel Handcuffs & he will be scarred/marked for life. Such & that he had no feeling in his left hand, from right to his wrist to the base of his left thumb & such feels dead that, previously on April 23, 2000, Plaintiff Jare who has long & lengthy significant history of serious mental health illness disease and who had been on anti-psychotic medications since 1969, when he was only 9 yrs old up until January 12, 1999, when Defendant Dr. Clark took him off of such, with an exception of a period of time from April, 1986 - May, 1987, when he was on psych. meds. at all, tried to kill himself by swallowing (9) open metal staples & began to cough up blood & had to be taken out to the emergency room at Holy Spirit Hospital, in Campbell, Pa. he did this because he couldn't take it anymore in prison because he was hearing voices in his head which told him himself, that, on April 24, 2000, a few hours prior to his being placed in steel Handcuffs, a black box, a steel waist chain, Padlock by Defendant Dr. Clark, Plaintiff Jare again attempted to kill by trying to split his head open by banging it against his cell wall. the voices in his head told him to do so, that despite Plaintiff Jare's attempt to take his life on April 23, & 24, 2000, & despite a prior mental illness relapse back on February 15, 2000, and February 16, 2000, when Jare rubbed feces all over his face, hair, arms, hands, chest & legs, and would tell prison staff that he was Jesus Christ & that the green man was running around his cell & trying to run up his ass & where he was banging his head off of his cell wall then too, Defendant Dr. Clark deliberately & refuses to put Plaintiff Jare back on anti-psychotic medication & deliberately & wantonly refuses to have Plaintiff Jare committed to a facility and a mental health commitment & wantonly & deliberately refuse to treat Plaintiff Jare for his serious mental health illness at all, that Plaintiff Jare still hears voices in his head & still has thoughts about killing himself time to time here since April 23, 2000, that Plaintiff Jare believes that time he tries to kill himself he will do so for certain as he is sick & that Plaintiff Jare wants to get help & treatment for his serious mental health illness from Defendant Dr. Clark & other prison staff.

He has requested such from Defendant Dr. Clark & other RISON Staff, but has been denied such help & treatment by Defendant Dr. Clark & other RISON Staff, that he had been in the at SCI-Camp Hill since November 19, 1999, that his mental illness causes him to act out & misbehave, that in February, April, May, June 2000, Defendant Rison Staff guilty of various misconducts & sanctioned him to disciplinary status even though such misconducts were the result of plaintiff's mental health illness disease & that Defendants Rison, Kovach, Nadeau & Kazar & others upheld such on plaintiff's appeal to them in such, that Defendants Kovach, Nadeau & Kazar, despite them all being aware that plaintiff has a mental illness disease have left plaintiff confined in the RISON disciplinary status that the officers in the RISON tease & aggravate him that on 6/20/00 Plaintiff was sent to the Special Assessment Unit (SAU) at SCI-Camp Hill for a mental health evaluation, he was returned back to SCI-Camp Hill on July 18, 2000, the Report from Waymart SAU recommends that plaintiff be placed in a Rison Special Management Unit (SMU) and that such placement in the SMU could be in his best interest given his significant history of various Mental Health Illness Disease. That, on October 24, 2000, the Plaintiff was transferred to & placed in the SMU at SCI-Greene, Waynesburg, Pennsylvania.

In addition, plaintiff's claims involve the denial of mental health care & treatment and it will probably be necessary to present mental health expert witness or to cross-examine the medical/mental health witness called by the defendants, or both. The presence of material issues requiring expert testimony supports the appointment of counsel. Mare v. Mabius, 976 F.2d 268, 272 (5th Cir. 1992); Jackson County v. McLean, 953 F.2d 1079, 1083 (7th Cir. 1992); Tricker v. Rison, 948 F.2d 388, 392 (7th Cir. 1991). See also Fanham v. Johnson, 126 F.3d 1032 (3d Cir. 1997).

2. The Degree To Which Factual Investigation Will Be Necessary And The Ability Of The Plaintiff To Pursue Such Investigation.

The Plaintiff has been transferred to be confined & locked up in the Special Management Unit at SCI-Greene & the incidents complained of in the Plaintiff's initial amended complaints, herein, occurred while the Plaintiff was in the RISON at SCI-Camp Hill, thus the Plaintiff has no ability to investigate



inmates who were housed in nearby cells and who are aware of the allegations of Plaintiff's initial & amended complaints herein this case and thus this Plaintiff is in the same situation as an inmate who has been transferred to a different institution, a factor that several courts have cited in appointing counsel. See Tucker v. Randall, 485 F.2d 388, 391-92 (7th Cir. 1991); Gatson v. Caglin, 679 F. Supp. 270, 273 (W.D. 1988) and Armstrong v. Snyder, 103 F.R.D. 96, 105 (E.D. WTS. 1990).

Also, as this Plaintiff is confined in the Special Management Unit ("SMU") at SCI-Greene, the SMU prison staff severely limit the number of times and the amount of hours per time that this Plaintiff can go to & use the SMU Mini Law Library for legal research (usually only once or twice a month & only two hours per time) and the legal research materials contained therein such as SMU Mini Law Library are extremely limited with almost no federal law books therein.

Furthermore, in Tabron v. Grace, 6 F.3d at 156, the U.S. Court of Appeals Third Circuit noted that courts should consider a prisoner's predicament in attempting to obtain facts, i.e. the confines of prison. See Rayes v. Johnson, 969 F.2d at 704 (noting the difficulties prisoner plaintiffs with mental issues cases may have with discovery). Further, courts should be aware that it may be difficult for indigent plaintiffs to understand the complex discovery rules. Id., 6 F.3d at 156. A malpractice case involves complex facts and medical records that most lawyers struggle to comprehend. See also Kilgo v. Rick, 189, 193-94 (11th Cir. 1993) (requiring district court either to appoint counsel or to allow plaintiff to complete the procedures, or skip some of the procedures).

Herein this instant case we have mental health issues, records & the mental health history issues concerning the identity of witnesses and the appointment of counsel.

(W.D.Wis. 1985) (need for discovery supported appointment of counsel)

### 3. Conflicting Testimony

Based on information and belief, Plaintiff avers & submits that his account(s) of the facts of the incident(s) herein will be square in conflict with that of the defendant. This aspect of the case will be a credibility contest between the defendant and the plaintiff, such intimate witnesses as can be located. The existence of the credibility issues supports the appointment of counsel. See Gatson, 679 F.Supp. 270, 273 (W.D.N.Y. 1988). See also Taben v. Grace, 6 F.3d 1567, 1568 Raves v. Johnson, 969 F.2d 700, 704 (8th Cir. 1992) and Whisenant, 739 F.2d 160, 163 (4th Cir. 1984).

### 4. The Indigent Plaintiff's Ability to Present His Case

This indigent plaintiff herein this case is confined in the prison's management unit ("SMU") and he lacks ready access to the law library. See Raves v. Johnson, 969 F.2d 700, 703-04 (8th Cir. 1992) (lack of ready access to a law library as a factor supporting the appointment of counsel). Furthermore, in Parham v. Johnson, 126 F.3d 454 (8th Cir. 1997), the court stated:

"In considering this factor, courts should consider the plaintiff's education, literacy, prior work experience, and prior litigation experience." Taben v. Grace, 6 F.3d at 156. Furthermore, courts must consider whether the plaintiff has access to necessary resources like a typewriter, photocopier, telephone and computer. Id. (citing Raves v. Johnson). While these factors will not always be determinative, they should be considered in each meritorious case. The defendant argues that Parham's ability to present and respond to motions indicates he was fully capable of presenting his own case. Parham's ability to file & respond to motions does indicate that Parham had some legal knowledge and is literate; however, this fact alone does not conclusively establish that Parham was able to present his own case. In Taben, the indigent prisoner filed interrogatories and responded to motions but the court found this inconclusive. See id. at 152. Instead the court found that the prisoner's lack of legal experience and the complex discovery rules clearly put him at a disadvantage compared to defendant's discovery tactics. Id. at 158. (Parham, 126 F.3d at 458).



consider & take note of the facts, that, 1) this Plaintiff, as a G.M.U. Inmate, does not have access to a computer at all, 2) this Plaintiff, as a G.M.U. Inmate, does not have access to a computer at all, 3) this Inmate as a G.M.U. Inmate, only has access to the telephone for emergencies, 4) this Plaintiff, an Indigent Inmate, ~~with~~ in no money, does not have access to a photocopier as he cannot pay for photocopies, 5) that, this Plaintiff, while having a G.E.D. and a Fla. Legal's Certificate and his literacy is excellent, does not have any prior work experience at a paying job and as to his prior litigation experience, this Plaintiff has never done a Federal jury trial because he has no legal training nor schooling nor experience in and does not know how to cross-examine witnesses (especially expert witnesses) present complicated evidence, nor in objecting to the tactics of opposing counsel that will be decided on these issues, particularly in a case such as this one where the case turns on how the jury will resolve complicated issues of fact, 6) Plaintiff has & suffers from serious mental health disease and has a mental health disability, which may interfere with his conducting a trial himself, and 7) that, this Plaintiff does "not" know how to properly show that he was under imminent danger of serious physical injury at the time of the incident alleged in his initial complaint, in this case, as "is" shown & supported by the facts that he has tried to establish/show that he was under imminent danger of serious physical injury twice before in two prior court cases of his before this court, but "has" failed to be able to show/establish such, and that made likely that he will fail to show/establish such here in this case too, unless the court appoints a lawyer for him. Thus, the above factors require this court to grant this motion & appoint counsel for this indigent prisoner/Plaintiff, herein.

### 5. The Complexity of the Legal Issues

Where the legal issues are complex, it will probably serve everyone in the best interest if counsel is appointed. See Tabran, 6 F.3d at 156, Mackin v. Freeland, 720 F.2d 885, 889 (7th Cir. 1984) ("Where the law is not clear it will be of

1/ These two cases are: *Over v. Glenn*, Cr. No. 1-98-1515 and *Over v. Glenn*, Cr. No. 1-98-1510.

best serve the ends of justice to have both sides of a difficult legal issue presented by those trained in legal analysis." Farham, 126 F.3d at 301.

Here in this case, what constitutes a showing of imminent danger of serious physical injury is not clear nor is the law surrounding the issue and thus the ends of justice will be served by counsel being appointed for the plaintiff herein this case.

In Farham, the Third Circuit, also stated & held:

"In this case, the ultimate issue appears relatively simple whether Dr. Johnson was deliberately indifferent to Farham's serious medical needs. A lay person, like Farham, should be able to comprehend what he needs to prove when the legal issue is understandable. However, comprehension alone does not equal ability to translate that understanding into presentation. While the ultimate issue may be comprehensible, courts must still look to the process going towards the ultimate issue and the discovery issues involved. In this case, Farham was not able to do a simple authentication of the certification bottle was not able to take deposition and was not represented at his own deposition. Farham's inability to introduce the certification bottle exemplifies the fact that counsel was needed in this case." (Farham, 126 F.3d at 459).

Here in this instant case, ~~the~~ subject before this court like in Farham, plaintiff Jai, a lay person, should be able to comprehend what he has to prove when legal issue is understandable, however, his comprehension of what constitutes imminent danger of serious physical injury alone does not equal ability to translate that understanding into a presentation of what he needs to show to establish he was under imminent danger of serious physical injury at the time of the incident. In his initial complaint herein this case & thereafter such inability on his part, which weighs in favor of counsel being appointed for him, herein this case.

Furthermore, plaintiff Jai submits that one of the legal issues which courts have considered to be complex enough to support the appointment of counsel includes state of mind issues like deliberate indifference. See Swafford v. Mondrell, 969 F.2d 517, 552 (7th Cir. 1992). Such an issue is present herein in this instant case.

Also, plaintiff Jai submits that the fact that he has requested a trial by a jury heavily in favor of appointment of counsel. As the Eighth Circuit U.S. Court of Appeals, stated in Abdullah v. Gunter, 949 F.3d 1032, 1036 (8th Cir. 1991):

"When a case will be tried by a jury, a plaintiff having to proceed without



Finally, medical and mental health care cases frequently involve technical issues that prison prisoners are unable to deal with adequately, that in many cases require the use of expert witnesses. Such is the case herein in this instant case subject before this Court.

### 6. Merit of the case

The Plaintiff's allegations, when proved clearly would establish a constitutional violation, as the plaintiff alleges that Defendant Clark had him placed in steel handcuffs, a black box, a steel waist chain and a pair of pants and left him like that for almost four days in his RHU B cell for punishment for his behavior that plaintiff was found guilty of prison misconducts & sanctions to disciplinary custody status/punitive segregation. And that such was upheld on appeals to Defendants Palakovich, Navatney and Kazar and Dragovich and that Defendants Dragovich, Palakovich, Navatney & Kazar continued to leave this Plaintiff in the prison's RHU on disciplinary custody status/punitive segregation and recommended that Plaintiff be transferred to & confined in a Prison's Management Unit ("SMU"), despite the fact that such misconduct was a direct result of Plaintiff's serious mental health illness disease & the Federal courts have long held that such conduct by prison officials is a violation of the Eighth Amendment. See Fotman v. Gerloff, 639 F.2d 415, 419 (8th Cir. 1980); Picarella v. Fenton, 491 F.Supp. 1020, 1024 (M.D. Pa. 1980); Landman v. Royster, 33 F.Supp. 621, 647-48 (E.D. Va. 1971); Heum v. Ray, 830 F.Supp. 1369, 1373 (D.N.D. 1993); Wheeler v. Glass, 983, 987 (7th Cir. 1973); Gauvey v. D.C. General Hospital, 480 F.Supp. 855-56 (D.D.C. 1979); Arnold on behalf of H.B. v. Lewis, 8 F.Supp. 246, 256 (D. Ariz. 1992); Cameron v. Jones, 783 F.Supp. 1511, 1524-25 (D. Mass. 1992); St. v. Owens, 719 F.Supp. 1256, 1303-04 (W.D. Pa. 1989), aff'd 907 F.2d 418 (3d Cir. 1990); Inmates of Accomack County v. ...

854,868(D.D.C. 1989) Langley v. Coughlin, 709 F.Supp. 482, 484-85(S.D.N.Y. 1989) Langley v. Coughlin, 715 F.Supp. at 482-49; Finney v. Mabry, 534 F.Supp. 1026, 1036-37 (E.D.Ark. 1982); Lewis, 834 F.Supp. 1477, 1548-49(D.Ark. 1993); DeMallay v. Miller, 882 442, 444-45 (8th Cir. 1988); Nolley v. County of Erie, 776 F.Supp. 75, 73 (W.D.N.Y. 1991). Also, Defendant Clark has shown deliberate in to plaintiff's serious mental health care needs and a denial of adequate care for such violates the Eighth Amendment. See: Smith v. VA, 919 F.2d 90, 92-93 (8th Cir. 1990); Langley v. Coughlin, 888 F.2d 252 (2d Cir. 1989) and Inmates of Allegheny County Jail v. France, 612 F.2d 75, 763 (3d Cir. 1979) by refusing to put the plaintiff back on anti-ps medication and/or by failing to commit him to a mental health facility where he can get the care and treatment he needs for his criminal offense and his serious mental health illness disease. On this fact, there this is a meritorious case.

#### VI. Plaintiff's Further Arguments

Also, counsel should be appointed for the Plaintiff herein, because this will require expert witness testimony. See Farmer v. Johnson, 126 F.3d at

Also, as the court put it, counsel can

explain the applicable legal principle to the complainant and . . . limit litigation to potentially meritorious issues. In addition, appointment of a lawyer provides the indigent inmate with the opportunity to obtain representation equally qualified with the professional counsel usually provided by the state for the defendants. (See Knighton v. Watkins, 616 F.2d 795, 799 (5th Cir. 1980).

#### VII. CONCLUSION

Thus, the appointment of counsel for the Plaintiff herein, will serve the overall interests of the parties and aid the court in reaching a just conclusion, herein this case:

Dated/Executed on:  
31st December 2000  
At New York, N.Y.

(S)

RESPECTFULLY SUBMITTED:

Mr. John Richard Jones  
175 Progress Drive  
Waverly, PA 15370